IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 26 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KARSANBHAI MELABHAI DESAI

Appearance:

1. Criminal Appeal No. 26 of 1996

MR LR POOJARI, APP for Petitioner

MR DK MODI for Respondent No. 1 - Absent

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/08/2003

ORAL JUDGEMENT

1. The State of Gujarat has preferred this appeal against the acquittal of the respondent for the offences under the provisions of the Prevention of Food

Adulteration Act, 1954 by the Court of the Judicial Magistrate First Class, Dehgam in Criminal Case No. 1115 of 1992.

2. As per the complaint of the Food Inspector at exh.1, the complainant had visited the shop on 20-5-1992 and purchased sample of loose ghee on 21-4-1992 at 8.45 in the morning in village Bahiyal of Dehgam Taluka. The sample was collected in presence of a panch witness and sent for analysis. Presence of turmeric powder was found in it. As per the report of the Public Analyst, it was not as per the standard prescribed in Appendix-B to the said Act at Srl.No. A:11:02:21. The accused was, therefore, tried for the offence under Section 16(1A)(ii) of the said Act under Section 7(v) thereof. The learned Judicial Magistrate, Dehgam, however, by the aforesaid order dated 22nd September 1995 made in Summary Case No.1115 of 1992, acquitted the accused, holding that the panch witness did not support the version of the complainant, and that, according to the panch witness, the spoon which was placed in the turmeric powder in his house, was used for stirring the sample of the ghee which was taken to his house for heating so that it could be put in bottles and sealed. It was also held that turmeric powder was not injurious to health and being article of primary food, its presence in the sample of ghee, which was taken by the complainant from the respondent, did not amount to adulteration of ghee. The learned Magistrate also held that there was breach of the requirement of Rule 18, because, the memorandum and seal were not sent separately to the public analyst. It was also found that the complaint was filed two months after the analyst's report was received.

3. The learned Additional Public Prosecutor has submitted that the deposition of the complainant clearly supported the prosecution version and can be relied upon for convicting the accused for the offences with which he was charged. It was argued that the complainant was fully corroborated by the report of the public analyst at exh.25. He also submitted that the finding of the learned Magistrate that turmeric powder was a primary food and not injurious to health and therefore, its addition in ghee was not adulteration of ghee, was erroneous. In support of this submission, he relied upon the decision of the Supreme Court in Badri Prasad v. State of M.P., reported in 1996 SCC (Cri.) 79, in which the Supreme Court, in context of chillies powder, held that a bare reading of Appendix `B' Item A.05.05.01 revealed that addition of a colouring or flavouring matter to chillies powder was prohibited, and therefore,

that per se would make the article adulterated. He also relied upon the decision of the Supreme Court in Prem Ballab v. The State of (Delhi Administration), reported in AIR 1977 SC 56, in which, in context of Rule 23 of the Rules under the said Act, the Supreme Court held that Rule 23 provided that the addition of a colouring matter to an article of food, except as specifically permitted by the Rules, was prohibited. In that case, the report of the public analyst showed that linseed oil sold by the appellant contained artificial dye and that was clearly prohibited by the Rules and hence, the case was clearly covered by clause (j) of Section 2(i) of the Act, as held by the Court.

4. The complainant, in his deposition at exh.14, has stated that he had gone to village Bahiyal on 21-4-1992 and at 8.45 A.M. visited Ambica Dairy, which was selling milk products. He disclosed his identity to the accused, who was the owner of the shop, and in presence of panch Hajaratbhai, he took sample of ghee from an aluminium jar which contained four kilograms of ghee. According to him, the sample so taken was placed in three clean bottles which were sealed. One such sealed sample was forwarded to the public analyst at Rajkot. The specimen of the seal was forwarded with a memorandum under a sealed cover by registered A.D. post. The report of the public analyst at exh.25 was received, as per which, the sample was adulterated due to the presence of turmeric powder detected therein. According to the complainant, he had sent notice on 25-9-1992 under Section 13(2) of the Act, but it was returned unserved. On this, the learned Magistrate found that the alleged refusal by the accused was not proved since the postman was not examined. In the cross-examination, the complainant admitted that there was a board of Ambica Dairy on the shop, but the name of the proprietor was not written on it. He denied the suggestion that the shop belonged to the panch witness. He also denied the suggestion that the ghee from which the sample was drawn was kept for domestic use by the owner. He admitted in his cross-examination that he had no material beyond the complaint to prove that Ambica Dairy was owned by the respondent. He admitted that turmeric is used as a primary food, and that its use was not injurious to health. He also admitted that there was no other deficiency found in the sample except presence of turmeric powder.

5. The panch witness Hajaratbhai, in his deposition at exh.52 has stated that when the sample of ghee was being taken, a pan was brought from his house and it was

weighed in that pan. The complainant did not pay any amount to the accused while purchasing the sample. In his cross-examination, he has admitted that he was a friend of the complainant. He stated that his residential house was adjoining the said shop. He has then stated that ghee was frozen and therefore, it was taken to his house for heating it and at that time, a spoon having turmeric powder on it was used for stirring the ghee and putting it in the sample bottles. There is no re-examination of this witness nor was he declared hostile despite his torpedoing the prosecution version in the above manner in the cross-examination. Absence of reaction on behalf of the prosecution despite the aforesaid statements in the cross-examination, to say the least, shows the apathy of the prosecutor who appeared in the matter.

6. From the deposition of panch witness, it appears that, since the ghee which was taken for being sent for analysis was frozen, it was taken to the nearby house of the panch witness and heated and at that time, a spoon, which had turmeric powder on it, was used for stirring the ghee, which was put in three bottles which were sealed and one of which was sent for analysis. Thus, the possibility of turmeric powder getting into the ghee after the sample was taken and was being stirred and being put in three bottles, cannot be ruled out and it cannot be safely said that at the time when ghee was taken out from the aluminium jar in the shop of the accused, it was already having turmeric powder in it.

6.1 The report of the public analyst exh.25 records that there was added colouring matter, namely turmeric detected in the sample. This is why the sample of ghee was described as adulterated. There was no other deficiency in the sample so far as its purity was concerned and in all other respect, it satisfied the standards laid down for the purpose under the law.

7. The learned Magistrate has held that, since the turmeric was primary food and it was not injurious to health, its presence in the sample of ghee detected by the public analyst and reported at exh.25, cannot be said to be adulteration of ghee. Such a finding is contrary to the provisions of the said Act and the Rules. Under Section 2(1a)(j) of the said Act, an article of food shall be deemed to be adulterated if any colouring matter, other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of

variability. Under Rule 23 of the said Rules, the addition of a colouring matter to any article of food, except as specifically permitted by the Rules, was prohibited. The addition of a colouring matter in ghee is not specifically permitted. On the contrary, the standard prescribed for ghee at Item A.11.02.21 in Appendix `B' to the Rules describes ghee as pure clarified fat derived solely from milk or from curd or from deshi (cooking) butter or from cream to which no colouring matter or preservative has been added. The standard of quality of ghee for Gujarat is specified at Item 10 of the Table contained in Standard A.11.02.21. All the parameters laid down in the said standard were satisfied so far as the analyzed sample is concerned, as can be seen by comparison of the report exh.25 and the standards reflected in Item 10 of the said Table. However, it is specifically mentioned in the said Standard that there should be no colouring matter added in ghee. It is thus clear that addition of colouring matter is prohibited, both while prescribing the standard for ghee, as also by Rule 23 of the said Rules. Turmeric powder was found as a colouring agent in the sample of ghee which was sent for analysis and since it was not only not specifically permitted, but was in fact specifically prohibited, the sample of ghee was deemed to be adulterated within the meaning of Section 2(1-a)(j) of the Act. The learned Magistrate therefore committed an error in holding that since turmeric was a primary food, its presence in the sample of ghee did not amount to adulteration on the ground that it was not injurious to health. When the colouring agent, though prohibited, is detected in a food article, the article would be adulterated notwithstanding the fact that the colouring agent may be a primary food or anything else.

9. In view of the factual position in the present case, which suggests that turmeric powder detected in the sample of ghee was as a result of stirring the ghee while taking the samples by a spoon which was having turmeric powder on it after the ghee was taken from the shop of the accused, it is not established by the prosecution that the ghee from which the samples were drawn was adulterated. There is, therefore, no warrant for interfering with the acquittal of the respondent accused. The appeal, is therefore, dismissed.

[R.K.ABICHANDANI, J.]

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